

**ORDER NO. 79502**

In the Matter of the Formal Complaint  
and Petition of CAT Communications  
International, Inc. v. Verizon Maryland  
Inc.

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Case No. 8972

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Before the Public Service Commission (“the Commission”) in this matter is an Application for Rehearing and Reconsideration filed on July 9, 2004 by CAT Communications International, Inc. (“CCI”) of Commission Order No. 79167. The Commission’s Staff (“Staff”) and Verizon Maryland Inc. (“Verizon”) each requested leave to file responses to the rehearing request, which leave is granted and responses are hereby accepted into the record.

In Order No. 79167 issued on June 10, 2004, the Commission dismissed CCI’s complaint against Verizon, a complaint in which CCI alleged Verizon’s breach of the parties’ Resale Agreement by unlawfully charging CCI for services that it did not order and which CCI asserted it had attempted to block. In reaching the decision in the case, the Commission panel hearing the case determined that under the CCI-Verizon original resale agreement, CCI shall bear responsibility for disputed service charges incurred by its customers – and that under the parties’ second agreement CCI is responsible for disputed charges of its customers – with one exception for which the parties agreed *to engage in settlement*, that is, with respect to certain incoming calls completed by an operator service provider or platform other than Verizon’s, the Order directed CCI and Verizon to engage in settlement discussions pursuant to Section 1.1 of the Alternate

Billed Calls provision of the Additional Services Attachment to the parties' New Interconnection Agreement.

Ultimately, the Order rejected CCI's arguments that the choice of "PIC None" and "LPIC None" place other carriers on notice that CCI should not bear responsibility for long distance calls made by its customers, as the selection of "PIC None" and "LPIC None" do not prevent such calls from being made or absolve the customers from payment responsibility. Also, other blocking services are available which CCI ordered on some lines but not others. Furthermore, the TBE-A screen is not a guaranteed block of incoming calls, and third-party operators may fail to consult the database. The Commission determined that as a matter of law the parties' resale and interconnection agreements govern the responsibility for the cost of such calls, and thus the responsibility for most of the disputed calls contested in this case properly lies with CCI under the agreements, which in turn has recourse to its end user customers.

On September 1, 2004, while CCI's Application for Rehearing was pending, Verizon filed a Notice of Utility Payment Failure (ML 94240) – noting CCI's failure to pay the charges for telecommunications services rendered to CCI by Verizon and sent a notice of payment and pending service termination to CCI. In its notice to CCI, Verizon represents that CCI is in default of the agreement with respect to \$489,732.46 of outstanding charges, and Verizon stated its intention to suspend its provision of resold service(s), begin disconnection of service, and terminate the parties agreement (contract executed March 19, 2003) on or after October 4, 2004.<sup>1</sup>

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<sup>1</sup> A non-confidential letter from CCI's general counsel to Verizon dated September 7, 2004 (copied to the Commission's Acting Executive Secretary) note the proposed effective date, October 4, 2004. The letter accuses Verizon of acting precipitously while CCI's Application for Rehearing and Reconsideration is pending and alerted the Commission of the need to consider this matter promptly.

Due to the proposed Verizon termination notice, CCI filed a motion on September 17, 2004 seeking a stay of Order No. 79167. In its motion for stay, CCI pressed the urgency of this matter based on the risk of termination of service to some 10,000 residential customers. Further, CCI noted – and the Commission is not unsympathetic concerning – essentially the loss of service to a substantial number of low-income residential customers.<sup>2</sup>

The Commission's Practice and Procedure regulations, Code of Maryland Regulations (COMAR) 20.07.02.08(C) provides that an application for rehearing shall specify the findings of fact or of law claimed to be erroneous, together with a brief statement of the ground of the alleged error. MD. CODE ANN., Public Utility Companies (PUC) Article, § 3-114(a) provides that in matters regarding requests for rehearing, the Commission may consider facts not presented in the original hearing. An application for rehearing does not automatically stay a Commission order. (§ 3-114(b)). In determining whether a stay should be granted, the Commission considers: (1) likelihood of the petitioner's success on the merits; (2) irreparable harm; (3) interests of the parties; and (4) the public interest. *Re Operation of Taxicabs in Baltimore*, 82 Md. PSC 387, 388 (1991).

As grounds for its request for reconsideration, CCI asserts that: (1) the Commission's decision was defective for lack of a full panel during the hearing; (2) the recent decision of the United States Court of Appeals for the District of Columbia Circuit in *United States Telecom Association v. Federal Communications Commission and Bell Atlantic Telephone Companies et. Al.* ("USTA II"), 359 F.3d 554 (2004), which vacated large portions of FCC Rules regarding leasing of the incumbent phone network to

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<sup>2</sup> On September 24, 2004 Verizon filed an Opposition to CCI's Motion for Stay, which pleading has also been considered by the Commission in this matter.

competitors, has materially affected the competitiveness of the telecommunications market in Maryland and as such commends reconsideration of the Commission's decision in this matter; (3) the NR9ZD block, which blocks Pay-Per-Call Service, should have been made available for UNE-P lines; (4) the Commission ignored altogether the "leakage" issue relating to the TBE-A block, as third parties may fail to consult the database and complete the call; and (5) the Order mischaracterizes the Commission's duties in this matter by reliance upon the contractual provisions of the parties agreements which CCI contends is counter to the public interest.

Upon careful review and consideration of this matter, the Commission determines that CCI's Application for Rehearing and Reconsideration should be denied. Also, as the application for rehearing and reconsideration are denied herein, CCI's Motion for Stay shall also be denied.

CCI's initial claim in this matter that the Commission's decision is somehow defective due to lack of a full panel is groundless. PUC § 3-104(a)(2) provides that the Commission shall conduct its proceedings *en banc* or in panels of (i) at least three commissioners; or (ii) one hearing examiner and at least two commissioners. Section 3-104(a)(3) provides that "[a] quorum consists of a majority of the Commission or a majority of a panel."

CCI was afforded a full and fair hearing at which a quorum of the panel was always present and in attendance. The record included the Commission's consideration of pre-filed direct and rebuttal testimony, two rounds of legal argument consisting of an initial and reply brief, as well as an on-the-record evidentiary hearing, all of which were

considered by the entire panel. CCI's assertion that every member of the panel must witness the entire hearing in order for CCI to receive a fair hearing is without merit.<sup>3</sup>

Further, as observed by Staff – in its reply memorandum to CCI's rehearing request, the Court of Appeals stated the general rule that “in the absence of specific statutory direction to the contrary the deciding member or members of an administrative or quasi-judicial agency need not hear the witness testify.” *Younkin v. Boltz et al.*, 241 Md. 339, 342 (1966). The Court of Appeals further stated that in an administrative proceeding “it is enough if those who decide have considered and appraised the evidence and the courts feel more satisfied that they have done so if they have heard argument.” *Id.* at 343. CCI does not claim that any particular Commissioner failed to consider and appraise the evidence. *See also, Clark v. County Board of Appeals for Montgomery County*, 235 Md. 320, 325 (1964). CCI also had an opportunity to present argument and did so through the submission of an initial and reply brief. Accordingly, the evidentiary hearing was conducted in accordance with due process of law.

Secondly, CCI asserts that the recent United States Court of Appeals for the District of Columbia decision in *USTA II* has had a material affect on the competitiveness of telecommunications services in Maryland, such that the Commission should reconsider its decision in this case. While CCI's notations regarding the impact of the decision may be insightful, they are of questionable relevance to this contractual dispute. As Verizon noted, the *USTA II* decision has no bearing on the disputed resale charges at issue in

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<sup>3</sup> The panel, in this case, consisted of two Commissioners and the Commission's deputy chief hearing examiner. Although the Commissioners split their hearing time in this matter, alternating one in the morning and another in the afternoon, this arrangement was noted at the outset of the hearings, without objection by CCI or any other party.

CCI's complaint. Also, as Verizon points out, all of the charges put at issue in CCI's dispute with Verizon had been incurred before the *USTA II* case was decided.

Two other arguments raised by CCI, grounds three and four, relate to blocking features which CCI asserts should have either been available (the NR9ZD block for UNE-P lines) and an alleged "leakage" issue (relating to the TBE-A block).<sup>4</sup> According to CCI it requested these blocks for all of its accounts. CCI submits that (per Verizon's testimony) charges associated with information service calls comprise a majority of the charges in dispute in this case.

In response, Verizon contends that with respect to the NR9ZD block CCI raises a matter not raised in its complaint and not litigated in this proceeding, as no evidence was presented regarding NR9ZD failures in this proceeding. Verizon notes that CCI's Complaint at ¶¶ 5, 12 solely concerns resale and not UNE-P. In addition, Verizon witness Terry Border's testimony points out clearly that CCI had the opportunity to procure TD7 blocks for its customers (which it did for approximately 22 percent) but did not do so for the remainder.

As to the TBE-A block, according to CCI the Commission ignored or disregarded the "leakage" issue relating to the TBE-A screen. The TBE-A block is a no charge line option available from Verizon to all resellers. As noted previously, its function is to

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<sup>4</sup> Verizon Maryland Inc. Tariff – MD PSC No. 203, Section 26(B)(9) provides that: At the request of any residence, business or coin customer of Verizon Maryland, Easy Number Basic or Deluxe Pay-Per-Call service may be restricted on an individual line-basis without charge. This arrangement would restrict completion of all Easy Number Pay-Per-Call services within the LATA. (Verizon has designated this block as USOC (Universal Service Order Code "U-Sock") – NR9ZD.)

TBE is Verizon telecommunications nomenclature for "Toll Billing Exception" screening services – TBE-A serves to screen third number and collect calls. However, Verizon does not guarantee that TBE service will block all collect or third number calls. TBE requires a screening process by an operator into the Line Identification Database ("LIDB"). (January 24, 2002 web notice regarding IntraLATA Calls, Collect And

screen third number and collect calls – protecting subscribers from incurring charges introduced by third party calling and collect calling procedures. Both Verizon and Staff noted that the issue raised and argued by CCI in its Application for Rehearing with respect to TBE-A is precisely as presented before the Commission panel in brief. The Commission found that TBE-A block was a screening tool and not a complete blocking service.<sup>5</sup> CCI's argument was rejected then and we find no grounds for reconsideration with regard to either of CCI's arguments concerning blocking features.

Finally, CCI asserts that Order No. 79167 somehow mischaracterizes the Commission's duty to Maryland's telecommunications consumers, and the competitive telecommunications carriers. Indeed, the Commission does have broad regulatory authority, including the authority to consider the impact of its decisions and the public interest. However, under the circumstances of this case, the Commission's decision is correct and in the public interest.

As noted by Staff, the interconnection agreements that underlie this case provide clear direction to resolve this dispute and the Commission does not err when it holds carriers to the terms and conditions of the agreements to which they enter. Moreover, the Commission aptly considered CCI's policy arguments, as well as those raised by Staff.<sup>6</sup> The Commission concluded that policy considerations also supported the application of the interconnection agreements under the facts of this case.<sup>7</sup> CAT's Application for Rehearing on these policy grounds is also denied. However, in light of the risk of service

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Third Number Calls. <http://www22.verizon.com/wholesale/clecsupport/content/1,,east-wholesale-resources-200...>

<sup>5</sup> Order No. 79167 at 14.

<sup>6</sup> *See id.* at 11, 14.

<sup>7</sup> *Id.* at 16 (“The decision to hold CCI responsible for the services ordered by its customers is a reasonable resolution between carriers ...”)

termination facing end-use low-income or poor credit customers as a result of Verizon's Notice of payment default and pending service termination, the Commission has determined it would be appropriate under COMAR 20.45.04.14 to consider steps to mitigate this affect.

COMAR 20.45.04.14A(1) provides that: If a utility fails to pay an undisputed bill of an underlying provider within 30 days of the due date, the underlying provider shall notify the Commission in writing. If the Commission receives the required notice, the Commission may find that the utility is in jeopardy of discontinuing service, or require the utility to provide periodic reports to demonstrate that it is financially capable of continuing to provide service without interruption. Based upon the filing by Verizon on September 1, 2004 of a Notice of payment default as it pertains to CCI, and subsequent reply by CCI, the Commission finds that CCI is in jeopardy of discontinuing service to a significant number of residential customers, and the Commission further finds that it is in the public interest to provide an adequate opportunity for customers to seek alternative service, if they need to do so, prior to any suspension of service.

Accordingly, for the foregoing reasons, the Application for Rehearing and Reconsideration submitted by CAT Communications International, Inc. in this matter is hereby denied. CCI's Motion for Stay is also denied. CCI has presented insufficient grounds to alter the previous determination that it must adhere to its contractual payment responsibility under its resale agreements reached with Verizon. The fact of the matter is that the ultimate payment responsibility should be borne by the CCI customers who made or accepted the calls, and under the parties' agreements, CCI accepted responsibility to pay for such charges of its customers and should have made collection efforts if it sought



reimbursement from the customers with whom it already has a billing relationship. On the record of this case and after consideration of the request for rehearing and response thereto, we find no reason for rehearing or reconsideration of the decision. However, in order to mitigate the potential harm that would be suffered by CCI's customers were Verizon to exercise its right to terminate service to CCI pursuant to its Notice of Utility Payment Failure, the Commission hereby suspends Verizon's Notice for Thirty (30) Days from the date of this Order. During this period, CCI may make satisfactory arrangements for payment to Verizon or, if necessary, Verizon, CCI and Staff are directed to develop an orderly plan for the migration of CCI's customers to other carriers.

**IT IS THEREFORE**, this 29<sup>th</sup> day of September, in the year Two Thousand and Four, by the Public Service Commission of Maryland,

**ORDERED:** (1) That CAT Communications International, Inc.'s Application for Rehearing and Reconsideration and its Motion for Stay are denied.

(2) That Verizon's Notice of Utility Payment Failure and notice of default and pending service termination, scheduled to take effect for purposes of terminating service to CAT Communications International, Inc. on October 4, 2004, is hereby suspended for thirty (30) days after the date of this Order pursuant to the discussion above.

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Commissioners